STANDARD JURY CHARGE - JUDGE KNOWLES

Members of the Jury:

You have now heard all of the evidence in the case, as well as the final arguments of the lawyers for the parties.

It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is also my duty at the end of the trial to instruct you on the law applicable to the case.

You, as jurors, are the judges of the facts. But in determining what actually happened in this case--that is, in reaching your decision as to the facts--it is your sworn duty to follow the law I am now in the process of defining for you.

You must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. That is, you must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

By the same token, it is also your duty to base your verdict solely upon the testimony and evidence in the case. That was the promise you made and the oath you took before being accepted by the parties as jurors in this case, and they have the right to expect nothing less.

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in my instructions, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case you must not be swayed by sympathy, bias, prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by me, and reach a just verdict.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. All persons stand equal before the law and are to be dealt with as equals in a court of justice. All are entitled to justice by the same standards.

As I stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted

in the case. The term "evidence" includes the sworn testimony of the witnesses in court, including the witnesses testifying in person and those testifying by deposition, the exhibits admitted in the record, and the stipulations, if any, of the parties.

The attorneys for the parties have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are of course to be governed by the Court's instructions. You must apply the law that I give you to the facts of this case.

Remember also that any statements, objections, or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

It is the duty of a party’s attorney to object when the other side offers testimony or other evidence which the attorney believes it is not properly admissible. You should not show prejudice against an attorney or party because the attorney or party has made objections.

Also, during the course of a trial I occasionally make comments to the lawyers, or ask questions of a witness, or admonish a witness concerning the manner in which he or she should respond to the questions of counsel. Do not assume from anything I may have said or any questions I may have asked that I have any opinion concerning any of the issues in this case. Except for the instructions I have given you throughout the trial and the instructions I am giving you now, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

Evidence may be either direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness, which directly proves a fact if you believe that witness. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

"Circumstantial evidence" is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

In your consideration of the evidence in the case, you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are permitted to draw, from the facts which you find have been proven, such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. That is, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness you should consider his or her relationship to the parties; his or her interest, if any, in the outcome of the case; his or her manner of testifying; his or her opportunity to observe or acquire knowledge concerning the facts about which he or she testified; his or her candor, fairness and intelligence; and the extent to which he or she has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

A witness may be discredited or "impeached" by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the

witness said or did something, or failed to say or do something, which is inconsistent with the witness's present testimony.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

You are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's appearance, bearing and demeanor, or because of the inherent improbability of his or her testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

On the other hand, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

BURDEN OF PROOF

One important principle of law is that of the "burden of proof." The party who has the burden of proof on a particular issue bears the responsibility or duty of persuasion on that issue. In order to be entitled to the relief he or she seeks in a civil case, the plaintiff is required to prove the elements of his or her case by a preponderance of the evidence; that is, by the greater

weight of the evidence. It is said, therefore, that the burden of proof is upon the plaintiff.

When a lawsuit is brought by a plaintiff against a defendant, the defendant may simply deny that he or she was at fault. The burden of proof is not upon the defendant to prove that he or she was not at fault, but rather it is up to the plaintiff to prove that the defendant was at fault and that because of the defendant's wrongful conduct the plaintiff sustained damages. In other words, after the plaintiff has presented evidence tending to establish the elements of his or her claim, the defendant may simply deny he or she was at fault and confine the evidence presented by him or her to evidence which tends to rebut or disprove the elements of the plaintiff's claim.

It may help you to think of a set of balancing scales. At the beginning of the trial, those scales on any given issue are in equal balance. They are level. If a party has the burden of proof on a particular issue, it is that party's responsibility to tilt the scales in their favor. In other words, if the scales are still level at the end of the proof, the party has failed to carry the burden; that is, failed to persuade you that his or her theory of that issue is more probable than not.

PREPONDERANCE OF THE EVIDENCE

This leads us to a discussion of the term "preponderance of the evidence." Here again, it may be helpful to envision a set of balancing scales. In a civil case, the party who has the burden of proof on a particular issue must carry that burden by a preponderance of the evidence. This means, simply, the greater weight of the evidence. After considering all the proof on a particular issue, the weight of the evidence must tip the scales in favor of the party with the burden of proof on that issue, be it ever so slightly.

A preponderance of the evidence, therefore, means such evidence, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proven is more likely true than not true. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so. To preponderate, evidence must have the greater convincing effect in the formation of your belief. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue must fail.

You should consider all the evidence pertaining to every issue, regardless of who presented it. In determining whether any fact in issue has been proven by a preponderance of the evidence, you may consider the testimony of the witnesses, regardless of who

called them, all exhibits received in evidence, regardless of who produced them, and any other evidence as I explained that term to you earlier.

STIPULATIONS, ADMISSIONS, AND JUDICIAL NOTICE

When the parties on both sides of a case stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proven.

In this case, the parties have stipulated as follows:

INTRODUCTION TO PRINCIPLES OF LAW

Now that I have instructed you on some general legal principles and on the issues presented in this case, I will now turn to the specific rules of law which you must apply to the facts of this case.

[Add parties instructions here as determined after discussion with counsel.]

PROXIMATE OR LEGAL CAUSE [IF APPLICABLE]

Another element that the Plaintiff must prove is that the Defendant's acts were a proximate cause of the injury sustained by the Plaintiff. The proximate cause of an injury is an act or omission which, in natural and continuous sequence, causes or fails to prevent the injury, and without which the injury would not have occurred.

An injury is proximately caused by an act or failure to act whenever it appears from the evidence in the case that the act or omission played a substantial part in bringing about or actually causing the injury, and that the injury was either a direct result or a reasonably probable consequence of the act or omission.

The acts or omissions of the Defendant in this case need not be the sole cause to be the proximate or legal cause of the Plaintiff's injuries. It is sufficient if such act or omission was a substantial factor in causing harm. However, if you find that the Defendant has proved by a preponderance of the evidence that the Plaintiff's injuries would have occurred even in the absence of the Defendant's conduct, you must find that the Defendant's conduct did not proximately cause the Plaintiffs' injuries.

Further, the Defendant cannot be held liable if you find that the Plaintiff's injuries were caused by a new or independent source that intervened between the Defendant's act or omission and the Plaintiff's injuries, such that the Plaintiffs' injuries were not reasonably foreseeable to the Defendant at the time he acted.

DAMAGES

I am turning now to the question of damages and what can be considered in determining an award of money damages in this case. By including damages in these instructions, I do not wish to suggest or imply anything about the issue of liability or about whether or not damages have been proven in this case.

[Specific Instructions On Damages As Applicable]

CERTAINTY OF DAMAGES

Damages are prohibited only when the existence of damage is uncertain, not when the amount is uncertain. When there is substantial evidence in the record and reasonable inferences may be drawn from that evidence, mathematical certainty is not required. In other words, it is sufficient if the extent of the damages may be reasonably inferred from the evidence.

GAMBLING VERDICT

If you decide Plaintiff is entitled to recover damages, you are cautioned to avoid, in arriving at the amount of such damages, what is known as a gambling, chance or quotient verdict.

Such a verdict is one that would be arrived at by each of the jurors agreeing in advance to set down the amount which he or she considers the Plaintiff is entitled to receive, the seven amounts are then added, the total is divided by seven and the resulting average is the amount that you award. A verdict arrived at in such manner would be illegal and could not stand. Fair and just compensation in an amount which all jurors can agree upon of their own free will after that particular amount has been discussed and all the jurors are satisfied with it, can be the only basis of a legal verdict rendered for the Plaintiff. The proper verdict will be one arrived at by the jury as the result of free, frank and open-minded deliberations as fair and just under the law and evidence in this case.

FINAL INSTRUCTIONS

The verdict which you must render in this case must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violating your individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine you own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. Remember at all times that you are not partisans or advocates. You are judges--judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

You may deliberate only when all of you are present in the jury room. You may not resume your deliberations after any breaks until all of you have returned to the jury room.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room, and when you have reached

unanimous agreement as to your verdict, you will have your foreperson fill in, date, and sign the form which sets forth the verdict upon which you unanimously agree and then return with your verdict to the courtroom.

During your deliberations, you will have the opportunity to review the exhibits which have been admitted into evidence, as well as any notes which you have taken during the course of the trial. Once you have reached a verdict, you will leave both the exhibits and your notes in the jury room.

If it becomes necessary during your deliberations to communicate with the Court, please reduce your message or question to writing signed by the foreperson and pass the note to the Marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical vote or division at that time.

Finally, I add the caution that nothing said in these instructions or in the verdict form is meant to suggest or convey in any way or manner what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

[Counsel to approach bench for objections to charge as read.]

You may now retire to the jury room to begin your deliberations.